

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TIMOTHY VANDENBELDT, et al.,

Plaintiffs,

Hon. Gordon J. Quist

v.

Case No. 1:10-cv-00406

PROPERTY M.D., LLC, et al.,

Defendants.

---

**REPORT AND RECOMMENDATION**

A settlement conference was held in this matter on December 8, 2011. Plaintiffs Kenneth Gilliam and James Martinez failed to appear. Both also failed to appear at an earlier settlement conference. As part of denying an earlier request for a show cause order by defendants (Dkt. 34), the Court stated: "Defendants may request that the Court order another settlement conference and require all Plaintiffs to attend." (Dkt. 36). The December 8, 2011 conference was scheduled, and in response to a request by defendants that all plaintiffs be required to attend in person the Court entered an order stating explicitly: "All plaintiffs will be required to attend the December 8, 2011 settlement conference in person. Failure to attend may result in sanctions including, possibly, a dismissal of their claims." (Dkt. 46).

This is the second time these two plaintiffs have failed to attend a settlement conference. The undersigned finds that dismissal of their claims with prejudice and without costs is an appropriate sanction under Fed. R. Civ. P. 16(f)(1)(A) given the fact that they were warned of this possibility in the Court's previous order. (Dkt. 46). The undersigned also finds that dismissal is appropriate under Fed. R. Civ. P. 41(b) and W.D.Mich. L.Civ.R. 41.1.

As such, the undersigned hereby recommends that the claims of Plaintiffs Kenneth Gilliam and James Martinez be dismissed pursuant to Fed. R. Civ. P. 16(f)(1)(A), Fed. R. Civ. P. 41(b) and W.D.Mich. L.Civ.R. 41.1 for failure to appear as ordered, want of prosecution and general failure to comply with the rules and orders of this court. Timely objections to this Report and Recommendation shall be considered those Plaintiffs' opportunity to show cause why this matter should not be dismissed.

Respectfully submitted,

Date: December 22, 2011

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).